

CRM-M-5029-2016 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-5029-2016 (O&M).
Decided on: July 14, 2016.**

Ram Rattan

..... Petitioner(s)

Versus

Mahinder and others

..... Respondent(s)

*** * ***

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.Deepak Basatia, Advocate,
for the petitioner.**

Mr.G.S.Salwara, DAG., Haryana.

**Mr.A.D.S.Jattana, Advocate,
for respondent Nos.1 to 3.**

M.M.S. BEDI, J (ORAL).

This petition has been filed under Section 482 Cr.P.C. by the prosecution witness Ram Rattan who had been permitted to be cross-examined under Section 311 Cr.P.C. before the trial Court on 14.1.2016 on the basis of an order dated 2.1.2016.

Brief facts, relevant for the adjudication of the present petition are that FIR No. 67 dated 9.5.2015, under Sections 323, 325, 341 and 302 read with Section 34 IPC, registered at Police Station, Radaur, was registered on the basis of an information received by the police on telephone that one Joginder Singh had been admitted in Hospital in injured condition and had been referred to CHC, Yamuna

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Nagar and was admitted in said Hospital, where he made a statement in presence of Ram Rattan to the effect that on 7.5.2015, he had gone to tubewell of Paral and while he was coming back towards his house, he was caused injuries by two persons with dandas on his head but he could not identify them on account of darkness as a result of which he had fallen down from the motorcycle and was beaten. On the basis of this statement, a DDR was recorded and the FIR was registered under Sections 323, 325 and 34 IPC.

During the course of investigation, Joginder Singh died on 22.5.2015, and offence under Section 302 IPC was added. Thereafter, the accused were arrested. On completion of investigation report under Section 173 (2) Cr.P.C. was filed and the charges were framed. All the witnesses connected with the crime were examined. After 17-18 witnesses having been examined, prosecution moved an application under Section 311 Cr.P.C. requesting that Ram Rattan, the present petitioner was also present when statement of injured Joginder Singh was recorded and who had put his thumb impressions on the complaint in presence of the petitioner. A prayer was made that petitioner should be summoned who could identify the left thumb impression of the deceased Joginder Singh on the complaint.

The trial Court had allowed the request of the prosecution and permitted to summon the petitioner for identifying the left thumb impression on the statement of the deceased Joginder Singh vide order dated 2.1.2016.

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In view of said circumstances, the petitioner appeared as a witness on 14.1.2016 and made a statement on oath as PW.18 which is as follows: -

PW18

Ram Rattan son of Rameshwar, aged 39 years labourer resident of village Raitkhana, District, Karnal.

On S.A.

*On 08.05.2015, I received telephonic information that Joginder had received injuries. On receipt of this we reached Gaba Hospital, Yamuna Nagar. At about 9.00/9.15 AM, police came there and enquired from my maternal uncle Joginder. Police recorded the statement of Joginder and obtained his thumb impression on it in my presence. **My maternal uncle told the police that on 7.5.015, after consuming liquor he had started from tubewell of Parmal and when he reached on the road, Soni and his two other companions attacked him with Danda from behind.** An objection was made by the learned defence counsels that no statement beyond the portion permitted under Section 311 Cr.P.C., can be allowed as the Court has granted permission to identify the thumb impression of Joginder deceased on the statement made to the investigating officer and no other evidence was permitted. Heard. Since in application under Section 311 Cr.P.C. request was made by the prosecution to examine Ram Rattan son of Rameshwar to identify left thumb impression of deceased Joginder Singh on the complaint and vide*

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order dated 2.1.2016, request of the prosecution was allowed, prosecution cannot examine the witness beyond this. The bracketed portion is different from the statement made by Joginder Singh on 8.5.2015 and no permission was sought to examine the witness regarding other facts. In the application under Section 311 Cr.P.C. moved by prosecution, it was never informed that the permission was also being sought to examine the witness on other facts, witness cannot be allowed to depose beyond the permission granted. Therefore, bracketed portion be expunged.

XX X by Shri Anil Aggarwal for accused Mahinder and S/Shri Rajesh Dhiman and D.S.Khurana, Advocates for accused Anuj Kumar and Sachin Kamboj.

Nil. Opportunity given.”

A perusal of above statement indicates that the trial Court had curtailed the statement of witness examined only to the extent he was permitted under Section 311 Cr.P.C.

Grievance of the petitioner is that he was at liberty to depose true facts on oath and his statement which is highlighted hereinabove has been wrongly ordered to be expunged as the deposition was beyond the permission granted under Section 311 Cr.P.C.

Counsel for the petitioner has vehemently contended that the order passed by the trial Court expunging the deposition mentioned hereinabove, is illegal and the order expunging above said

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italicized words is illegal. It was urged by the counsel for the petitioner that the above said deposition on oath may be permitted to be kept on record and the objection should have been kept open to be decided at the time of final arguments.

Counsel for the accused- private respondents has vehemently opposed the present petition contending that the petitioner is merely a witness who had been permitted under Section 311 Cr.P.C. to be examined and the scope of examination cannot be extended beyond the permission granted and objective for which the application under Section 311 Cr.P.C., was made especially when the statement of the witness had not earlier been recorded under Section 161 Cr.P.C.

Contention of the learned counsel for the petitioner is that no bar had been created by the trial Court while allowing the application under Section 311 Cr.P.C. to curtail the deposition only within the parameters of the permission granted.

Learned counsel for the accused persons also submitted that in view of the fact that the trial Court has already heard final arguments, the accused will have to be permitted cross-examination of the objected-to portion and the same having not been done, it will not be appropriate to revert the arms of the clock back and to start the proceedings with effect from the stage when cross-examination of PW18 had been completed.

I have considered the facts and circumstances of the case and I am of the opinion that the object of provisions of Section 311

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Cr.P.C. is to enable the Court to call any witness if his examination is necessary for the just decision of the case. The powers granted under Section 311 Cr.P.C. are not to be exercised to fill in the lacuna to cause prejudice to the accused. In the present case while allowing the application under Section 311 Cr.P.C., the prayer of the Public Prosecutor as mentioned in the application, Annexure P1, under Section 311 Cr.P.C., was considered wherein Ram Rattan had been sought to be examined to identify the left thumb impression of deceased Joginder Singh on the complaint. The said application was allowed by observing in the order dated 2.1.2016, that the prosecution intended to examine Ram Rattan for identifying thumb impression of Joginder Singh on the complaint. The statement of Joginder Singh is the statement of a dead person who cannot be cross-examined. The said statement even if permitted to be proved by any other witness, has to be in consonance with the original statement. In the present case, the witness PW18 Ram Rattan who is the petitioner before this Court had made an attempt to incorporate the words to the effect that Soni and his two companions had attacked Joginder Singh with danda from behind. The words of Ram Rattan indicated in italicized above prima facie are not only an improvement but a pointer towards culpability of the persons facing trial. It is settled principle of law that a court should not be a mere spectator while recording the evidence. It is the duty of the Court to ensure that the evidence produced is in accordance with the provisions of Indian Evidence Act, which permitted the production of only that evidence

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which is pertaining to fact in issue or is relevant under the Indian Evidence Act. The scope of Section 311 Cr.P.C., cannot be extended by calling any witness at any time and giving him liberty to depose any thing which would have the effect of causing prejudice to the accused or to fill in the lacuna. The trial Court has rightly upheld the objection of the defence counsel that no statement beyond the portion permitted under Section 311 Cr.P.C., should be allowed as limited permission had been granted to the prosecution to examine Ram Rattan to identify the thumb impression of Joginder Singh on the statement made before his death.

No ground is made out for interference in the impugned order. The petition is dismissed.

July 14, 2016.
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(M.M.S. BEDI)
JUDGE